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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/582,656

04/03/2007

Raymond John Bacon

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4955

7590

03/30/2011

WARE FRESSOLA VAN DER SLUYS & ADOLPHSON, LLP  
BRADFORD GREEN, BUILDING 5  
755 MAIN STREET, P O BOX 224  
MONROE, CT 06468

EXAMINER

KUMAR, RAKESH

ART UNIT

PAPER NUMBER

3651

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/582,656	<b>Applicant(s)</b> BACON, RAYMOND JOHN	
	<b>Examiner</b> RAKESH KUMAR	<b>Art Unit</b> 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2011.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 2,5,6,12-14,17,18,21,22 and 26-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,7-11,15,16,19,20 and 23-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/1/2010</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/04/2011 has been entered.

### ***Claim Objections***

Claim 1 objected to because of the following informalities: The preamble of claim 1 includes limitations that read into the structure of the invention. Although the preamble of a claim is a part of the claim, the structure recited in the preamble is not afforded the weight as the limitations that follow. It is suggested the structure the applicant deems pertinent be recited positively in the structure of the claim following the preamble. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Referring to claim 1. Claim 1 recites the limitations “an accommodation on the body” in line 11. It is unclear as what is the accommodation that is referred to be on the body, is the accommodation a part or an ability of the apparatus. The recited limitations are indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is suggested the applicant positively define the structure that is on the body of the dispenser as referred to. Appropriate action is required.

Claim 1 recites the limitation "the substance" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the orifice" in line 9. There is insufficient antecedent basis for this limitation in the claim. It is suggested the limitations be amended to read --a dispensing orifice--.

Claim 1 recites the limitation "the dispensing action" in line 10. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the counted" in line 11. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the release" in line 14. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1,3,4,7-11,15,16,19,20 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dessertine (US 5,020,527) in view of Bacon (US 7,047,964) and further in view of Ma (US 6,981,602).

Referring to claims 1,4,10,15,19,20 and 23-25. Dessertine discloses a dispenser (Figure 1) for dispensing a substance (15) in individual portions counted by a multi-use counter (Figure 4) having a display incremented or decremented with the count of portions (see Figure 4) dispensed and a dispense action detector (23) for detection of portion dispensing, the dispenser

comprising:

- a body (1) having a dispensing orifice (13 through opening at 5);
- a container (15) for the substance, the container (15) being integral with or accommodated on the body (1);
- a mechanism (47) in the body (1) and/or the container for dispensing individual portions of the substance to the orifice (13), the mechanism having:
  - a displaceable element (47) for initiating the dispensing action;
  - an accommodation (surface wherein member 21 is mounted to member 1) on the body (1) for the counter (51) with its detector (23) arranged for detection of dispensing actions of the mechanism (47; Figure 1).

Dessertine does not disclose a closure adapted to enclosing the counter and does not disclose the closure is tamper evident comprising a frangible portion.

Bacon discloses a medicament dispenser (Figure 3a, 3b) wherein a closure (203) adapted to co-operate with a portion of the body providing the accommodation for removably enclosing the counter (105,106) in the accommodation.

Ma discloses a tamper evident closure (Figure 4) wherein the a frangible portion (20; Figure 4) is released such that the closure is tamer evident.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teachings of Dessertine to have included a closure adapted to enclose the counter (counting portions 105, 106) as taught by Bacon because the closure would prevent the apparatus from being contaminated.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teachings of Dessertine in view of Bacon to have a closure provided with a tamper evident frangible portion as taught by Ma because it would allow a user a certainty of the apparatus not being tampered with.

Referring to claim 3. Bacon discloses dispenser wherein the closure (203) is adapted to be irremovably connected to the body.

Referring to claim 7. Bacon discloses dispenser wherein the closure is a cap (7) over the end of the receptacle to captivate the counter (8).

Referring to claim 8,9,11. Bacon discloses dispenser wherein the closure (7) has a window for viewing (19) the display of the counter (8).

### ***Response to Arguments***

Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection. Rejections in light of newly cited references are stated above.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAKESH KUMAR whose telephone number is (571) 272-8314. The examiner can normally be reached on M-F 8 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 3651

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gene Crawford/  
Supervisory Patent Examiner, Art  
Unit 3651

/RAKESH KUMAR/  
Examiner, Art Unit 3651